

BOARD OF APPEALS CASE NO. 5358

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BEFORE THE

**APPLICANTS: Peter Tutalo, Whiteford
Packing Co. & David Lawrence**

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ZONING HEARING EXAMINER

**REQUEST: Special Exceptions to allow
commercial vehicle storage and construction
services in the AG District; 2709 Whiteford
Road, Whiteford**

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OF HARFORD COUNTY

Hearing Advertised

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Aegis: 6/11/03 & 6/18/03

HEARING DATE: July 16, 2003

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Record: 6/13/03 & 6/20/03

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Peter Tutalo, Whiteford Packing Company and David Lawrence, are seeking a Special Exception pursuant, to Section 267-53D(1) and Section 267-53H(1) of the Harford County Code, for storage of commercial vehicles and construction services in an Agricultural District.

The subject property is located at 2709 Whiteford Road, Whiteford, Maryland 21160, in the Fifth Election District, and is more particularly identified on Tax Map 8, Grid 4B, Parcel 70. The parcel contains approximately 80.065 acres, more or less.

Mr. David Lawrence appeared, and testified that he is the contract purchaser of the subject property, and that the sale is contingent on the granting of the requested special exception. He indicated that he has read the Department of Planning and Zoning Staff Report, and that he has one correction to that report. Page Four of the Staff Report, states that Mr. Lawrence's business, Baltimore Pile Driving and Marine Construction Company, owns five diesel dump trucks. The witness clarified that business actually owns twenty diesel dump trucks, a tractor trailer, and other assorted equipment. He also stated that because most of the drivers take their vehicles home each evening, the trucks will not all be present on the property at the same time. The Applicant further testified that his company is a family owned business, and that no public sales will be made from the subject property.

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According to Mr. Lawrence, the subject property is zoned Agricultural. The total farm contains 167 acres, however, the witness has contracted to buy only 80 acres at this time. He indicated that he hopes to purchase the remaining acreage within the next several years.

The Applicant then described the aerial photograph incorporated as Attachment 8 to the Department of Planning and Zoning Staff Report. According to the witness, the buildings shown in the center of that photograph, are located on the northwest side of the power lines, which run across the right upper quadrant of the photograph. Maryland Route 136, which bisects the parcel from east to west, can also be seen in the aerial photograph. Mr. Lawrence testified that he has met with the State Highway Administration, concerning site distance at the intersection of the entrance road, and Maryland Route 136. According to that agency, the site distance at that intersection is only 650 feet in each direction. Therefore, the witness stated that he intends to move the entrance road to an alternate site, as suggested by the State Highway Administration.

Mr. Lawrence also testified that he intends to create an earth berm, with a row of pine trees along the entrance road, to screen the stored vehicles from sight of both nearby dwellings, and Maryland Route 136. He further stated, that there is a minimum, one-quarter mile buffer, between the proposed storage site and all nearby residential building.

The Applicant next testified about his proposed use of the subject property. He stated that his company intends to store up to twenty diesel dump trucks, plus other assorted equipment, including snow plows, on the property. He also intends to tear down all dilapidated buildings, build a residence across the street from the subject site, and to operate the premises as a working farm. The witness emphasized his intention to keep the property within the Agricultural Preservation District. He also testified that he intends to bring jobs to the area, by hiring local area residents to work in his business.

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Mr. Lawrence averred that, in his opinion, the proposed special exception use, will have no adverse impact on either surrounding properties, or the Whiteford community. Traffic generated by the proposed use will be minimal, construction vehicles will be stored at least one quarter mile away from the closest residence, and all vehicles will be screened from adjacent properties by a wooded buffer. In response to questions on cross examination, Mr. Lawrence reaffirmed, that he is not requesting a change in zoning classification, and that he intends to keep the property within the Agricultural Preservation District.

Mr. Peter Tutalo, Chief Executive Officer of the property owner, Whiteford Packing Company, testified that the building referred to in the Department of Planning and Zoning Staff Report, as a pole barn, is actually a farm shop. He stated that while Whiteford Packing Company was utilizing the premises for business purposes, it stored more heavy equipment on the property, than that being proposed by the Applicant. He also indicated that the property was previously a very active commercial location, which operated twenty-four hours per day.

Mr. Bill Hanna, who resides approximately one mile from the subject property, testified that he is the former president of Whiteford Packing Company. He described himself as a community activist, indicating that he is chairman of the Whiteford/Pylesville Community Council, and, is presently on the Harford County Agricultural Advisory Board. Mr. Hannah testified that he supports the present Application, because he believes that the Applicant will preserve Harford County farmland, and improve the aesthetics of the existing farm. He expressed his approval of the plan to create a wooded buffer for the storage area. The witness also opined that, the creation of a new access drive, will increase traffic safety in the area.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared, and testified, regarding the findings of fact, and recommendations, of that agency. Mr. McClune testified that the Department of Planning and Zoning recommended approval of the subject request in its June 27, 2003 Staff Report, subject to two conditions set forth in that report.

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According to Mr. McClune, the subject property is located at the northern end of the county, in a sparsely populated agricultural area. The property is currently participating in the Maryland State Agricultural District, meaning that if the requested special exception is granted, the Applicant must either seek approval by the Agricultural Advisory Board, or withdraw the property from the program prior to the issuance of permits. Mr. McClune testified that the Department had reviewed the subject property, and determined that it is a suitable location for storing up to twenty dump trucks, plus the other equipment, referred to by the Applicant. He also indicated that once the existing driveway is relocated, based on specifications set forth by the State Highway Administration, the proposed use will meet, or exceed, all Code requirements. He next testified that the Department had considered all provisions set forth in Section 267-9I in connection with this request, and determined that the proposed facility meets all the criteria set forth in that Code section.

Finally, Mr. McClune stated that, in his opinion, the proposed use, at the proposed location, would not result in any adverse impact to adjacent properties, or have any greater impact on adjacent uses or properties, than if it were located elsewhere within the same zoning district. According to Mr. McClune, Maryland Route 136 is a major collector road, and the proposed use will have no impact on traffic. In addition, other residents in the area operate trucks, or heavy farm equipment, on that road. Mr. McClune emphasized, that the Applicant proposes to store all equipment, either inside the barn, or within a screened area, protected from view by area residents. He also noted that the existing topography, makes it difficult to see the current storage area, from outside the subject property.

No witnesses appeared in opposition to this application.

CONCLUSION

The Applicants, Peter Tutalo, Whiteford Packing Company and David Lawrence, are seeking a Special Exception, pursuant to Section 267-53D(1), and Section 267-53H(1) of the Harford County Code for storage of commercial vehicles and construction services in an Agricultural District.

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The relevant provisions of the Harford County Code with regard to special exception uses are set forth below.

Section 267-51 provides:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 provides:

“General Regulations

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.**
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”**

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Section 267-53D(1) provides:

“Motor Vehicle and related services:

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:**
 - (a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.**
 - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.**
 - (c) A minimum parcel area of two (2) acres shall be provided.”**

Section 267-53H(1) of the Harford County Code provides:

“Services.

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to residential lot or visible from a public road.**

Section 267-91 provides as follows:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

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- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.**
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.**
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.**
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.**
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.**
- (10) The preservation of cultural and historic landmarks.”**

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The Court of Appeals established the standard for determining whether to grant a special exception in the case of Schultz v. Pritts, stating that:

“...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden.”
(Emphasis in original) 291 Md. 1, 11, 432 A.2d 1319 (1981).

The Schultz court further held that “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

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The Hearing Examiner finds that the Applicant met his burden of proving that the requested use meets the standards and requirements prescribed by the Harford County Code. The proposed vehicle storage area is located in an AG District, and the vehicles, and equipment, will be stored either within an enclosed building, or in an area fully screened from view by adjacent property owners. The subject property, which contains over eighty acres, far exceeds the two-acre minimum size for such uses. In addition, the proposed use will be located over one-quarter mile from any adjacent residences, and buffered in such a way as to prevent visibility from any public road.

The Hearing Examiner also finds that the Applicant has met his burden of proving that the proposed use could be conducted without detriment to the neighborhood, and, without adversely affecting the public interest. The proposed use will generate less traffic, than previous commercial uses. In addition, the Applicant expressed a strong intention to remove dilapidated buildings from the premises, and to maintain the agricultural use of the property. The subject parcel is very secluded, and the proposed use will not be visible by either adjoining property owners, or travelers on Maryland Route 136.

The Hearing Examiner adopts the findings of the Department of Planning and Zoning, that the proposed use meets all criteria set forth in Section 267-9I of the Harford County Code. The Hearing Examiner also finds that the proposed use, at the proposed location, would not result in any adverse impact to adjoining properties. Finally, the Hearing Examiner finds that the proposed use will not have any greater impact on adjacent properties, than if it were located elsewhere within the AG District.

The Hearing Examiner recommends approval of the application with the following conditions:

1. That the existing entrance of the property be relocated, to a location approved by the State Highway Administration.
2. That all vehicles and equipment be stored either inside, or within an area fully screened from the view of adjacent residences or public roads.

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3. That the Applicants prepare a detailed site plan to be reviewed and approved through the Development Advisory Committee (DAC). The site plan shall show the proposed outside storage areas, and include a landscaping plan.
4. That the Applicant obtain all necessary permits and approvals for the proposed use, including all necessary preliminary plan and final plat approvals for the subdivision of the property from the overall tract.

Date JULY 30, 2003

**Rebecca A. Bryant
Zoning Hearing Examiner**